

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

In the matter of:

PUERTO RICO ELECTRIC POWER
AUTHORITY,
San Juan Steam Plant
San Juan, Puerto Rico

NOTICE OF VIOLATION:

Index No. CAA-02-2002-1305

I. STATUTORY AUTHORITY

THIS NOTICE OF VIOLATION ("NOV") is issued to the Puerto Rico Electric Power Authority, ("Respondent") for violations at its San Juan Steam Plant located at Puerto Rico Road #28 Port Zone, San Juan, Puerto Rico (the "facility"), pursuant to Section 113 of the Clean Air Act (the "Act"), 42 U.S.C. §7413, as amended. Section 113 of the Act requires the Administrator of the U.S. Environmental Protection Agency ("EPA") to notify both the person and the State in which the violation occurred of the finding whenever EPA finds that a person violated a requirement of a State Implementation Plan ("SIP"). The authority to issue this NOV has been duly delegated to the Division Director of the Caribbean Environmental Protection Division, from the Administrator through the Regional Administrator of EPA Region 2.

II. EPA FINDINGS: PUERTO RICO SIP:

A. Visible Emissions:

Rule 403 of the Puerto Rico Regulation for the Control of Atmospheric Pollution, (PRRCAP) Visible Emissions, provides in pertinent part that:

No person shall cause or permit the emission of visible air pollutants of an opacity greater than 20 percent (6-minute average). Compliance with the visible emissions limitation shall be determined by using the test methods in Rule 106.

Respondent owns and operates the San Juan Steam Plant which is a source of air emissions. On or about November 16, 2001, two (2) duly-designated EPA inspectors conducted an inspection at Respondent's San Juan Steam Plant.

During the inspection, the EPA inspectors observed that Respondent was operating the facility with a visual emission greater than 20% opacity. Specifically, the visual emission readings taken by one of the EPA inspector on November 16, 2001, show the following violation(s):

UNIT	VISIBLE EMISSIONS READING
Stack 9-2	30.42%, 41.25%, 44.16%, 44.58%, 44.167

Respondent's operation of the facility, as described above, is in violation of the applicable statutes and regulations of both Commonwealth and federal law until it establishes continued compliance. Furthermore, EPA and Respondent entered into a Consent Decree, Civil Action No. 93-2527 CCC, under which Respondent is obliged to operate each generating facility in compliance with Rule 403 of the PRRCAP and the applicable federal law.

III. ENFORCEMENT

Section 113 of the Act, 42 U.S.C. § 7413, provides that after 30 days from the issuance of this NOV, the EPA may:

- issue an order requiring compliance with the requirements or prohibitions of the SIP;
- issue an administrative penalty order pursuant to Section 113(d) of the Act, for civil administrative penalties of up to \$25,000¹ per day of violation;
- bring a civil action pursuant to Section 113 (b) of the Act, for injunction relief and/or civil penalties of not more than \$25,000² per day for each violation.
- bring a criminal prosecution seeking fines and/or imprisonment pursuant to Section 113(c) if Respondent knowingly violates any requirement or prohibition of an applicable implementation plan during any period of federally assumed enforcement.

¹See the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Pub. L. 101-410, enacted October 5, 1990; 104 Stat.890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note; Public Law 104-134, enacted April 26, 1996; 110 Stat. 1321). The Debt Collection Improvement Act or "DCIA" requires each Federal agency to issue regulations adjusting for inflation the maximum civil monetary penalties that can be imposed pursuant to such agency's statutes. With the adoption of this rule implementing these statutes, all violations which take place after January 30, 1997 are subject to the new statutory maximum civil penalty amounts. With limited exceptions not relevant to this referral, all of the statutory penalty provisions applicable to this action have been increased by the maximum allowed: ten percent. All affected penalty provisions and their statutory maximum amounts are set out in Table 1 of 40 C.F.R. § 19.4. In this case, the statutory maximum penalties under the CAA are increased to \$27,500 under the DCIA as well as under the CAA penalty policy amounts.

²*Id* at n.1.

IV. PENALTY ASSESSMENT CRITERIA

If a penalty is assessed in a civil or administrative action, Section 113 (e)(1) of the Act, 42 U.S.C. § 7413 (e) (1), states that the Administrator or the court, as appropriate, shall, in determining the amount of penalty to be assessed, consider (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113 (e)(2) of the Act, 42 U.S.C. § 7413 (e) (2), allows the Administrator, or the court as appropriate, to assess a penalty for each day of violation. The number of days of violation shall include the date of the notice and each and every day thereafter until Respondent achieves continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, then the EPA may reduce the penalty accordingly.

Upon conviction under Section 113(c), Respondent may be fined pursuant to Title 18 of the United States Code, or imprisoned for a term not to exceed five years or both. If the person is a second time offender, the maximum punishment shall be doubled with respect to both the fine and the term of imprisonment. Also, the facility will be declared ineligible for Federal contracts, grants, and loans. The Administrator may extend this ineligibility to other facilities owned by the Respondent (Section 306 of the Act, the regulations promulgated thereunder at 40 CFR Part 15, and Executive Order 11738).

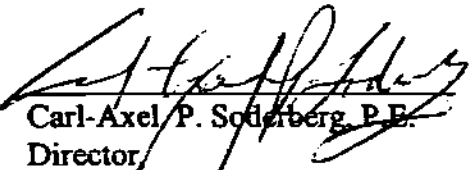
V. OPPORTUNITY TO CONFER

Regarding the violations included in this NOV, EPA may give an opportunity to Respondent to confer provided it requests such a conference within five (5) days of receipt of this NOV. A

request for a conference should be directed to:

Hector Vélez Cruz, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
1492 Ponce de Leon Ave.
Centro Europa Building Suite 207
San Juan, Puerto Rico 00910
(787) - 977-5850

Issued: Dec 4, 2001
San Juan, Puerto Rico


Carl-Axel P. Soderberg, P.E.
Director,
Caribbean Environmental Protection Division
1492 Ponce de Leon Ave.
Centro Europa Building Suite 207
San Juan, Puerto Rico 00910
(787) - 977-5801

To: Mr. Hector Rosario
Executive Director
Puerto Rico Electric Power Authority
P.O. Box 364267
San Juan, Puerto Rico 00907-0386

cc: Mr. Angel O. Berrios, Director
Air Quality Area
Puerto Rico Environmental Quality Board
P.O. Box 11488
San Juan, Puerto Rico 00910

bcc: A. Praschak, 2ORC
S. Carreño, 2ORC
D. Stone, 2ORC
H. Patel, 2DECA-AC
F. Claudio, 2CEPD
H. Stewart, DOJ

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VISIBLE EMISSION OBSERVATION FORM 1

Method Used (Check One) Method 9 200A 200B Other

Company Name Puerto Rico Electric Power Authority
 Facility Name San Juan Steam Plant
 Street Address Ave. C, San Juan
 City San Juan State PR Zip

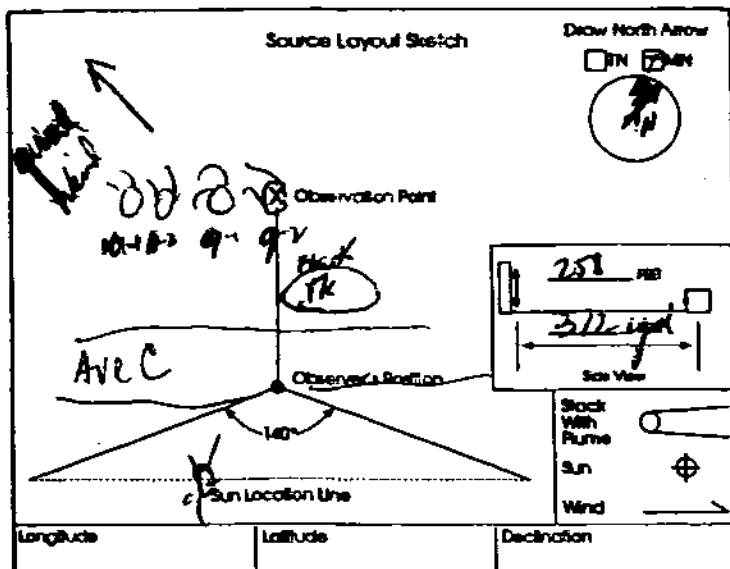
Process Combustion Unit # Operating Mode
 Control Equipment Operating Mode

Description of Emission Point Red & white stack #2
 Height of Emission Pt. 258 ft end 258 ft
 Distance to Emission Pt. 372 yd end 372 yd
 Direction to Emission Pt. (Degrees) 316 NW end 316 NW

Vertical Angle to Obs. Pt. 10° end 10°
 Direction to Obs. Pt. (Degrees) 316 NW end 316 NW
 Distance and Direction to Observation Point from Emission Point ± 40 straight up end ± 40 straight up

Description of Emissions lofting end lofting
 Emission Color white end white
 Water Droplet Plume Attached ☐ Detached ☐ None ☒

Description of Plume Background sky end sky
 Background Color blue end blue
 Wind Speed 4 mph end 4 mph
 Wind Direction East end East
 Ambient Temp. 86° end 86°
 Wet Bulb Temp. 87% end 87%



Form Number 1 Page 1
 Continued on VEO Form Number 2

Observation Date	Time Zone	Start Time	End Time
<u>Nov 16/2001</u>	<u>EST-PR</u>	<u>9:23 am</u>	<u>9:52 am</u>
Sec	Min	Sec	Min
1	30	30	25
2	25	35	30
3	30	30	35
4	40	30	40
5	30	30	25
6	35	30	25
7	35	25	25
8	20	20	40
9	20	40	50
10	45	60	60
11	60	40	50
12	45	50	50
13	50	45	50
14	40	50	50
15	40	30	35
16	50	50	30
17	40	50	50
18	50	45	45
19	45	50	50
20	50	45	50
21	45	50	35
22	45	50	45
23	50	50	30
24	40	45	35
25	30	35	30
26	40	40	45
27	50	40	35
28	50	50	52
29	50	45	45
30	50	45	50

Observer's Name (Print) Francisco Claudio Rio
 Observer's Signature Francisco Claudio Rio Date 11/16/01
 Organization USEPA CEPD ESB
 Certified By ETA Date June 1, 2002

Additional Information
 VEO readings were taken at 400 meters from the tip of the stack at the point of greatest opacity and before the VEO F1.1 plume lands.